



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2015 Biennium

|                         |              |                |  |
|-------------------------|--------------|----------------|--|
| <b>Bill #</b>           | HB0357       | <b>Title:</b>  | Generally revise school laws creating an education savings account |
| <b>Primary Sponsor:</b> | Hansen, Kris | <b>Status:</b> | As Amended in House Committee                                      |

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact     | <input type="checkbox"/> Needs to be included in HB 2  | <input checked="" type="checkbox"/> Technical Concerns   |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

### FISCAL SUMMARY

|   | <u>FY 2014<br/>Difference</u> | <u>FY 2015<br/>Difference</u> | <u>FY 2016<br/>Difference</u> | <u>FY 2017<br/>Difference</u> |
|---|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| <b>Expenditures:</b>                    |                               |                               |                               |                               |
| General Fund                            | \$5,000,000                   | \$5,000,000                   | \$6,496,204                   | \$7,893,068                   |
| State Special Revenue (OPI)             | \$68,201                      | \$68,201                      | \$69,224                      | \$70,262                      |
| State Special Revenue (OCHE)            | \$66,896                      | \$63,996                      | \$64,956                      | \$65,930                      |
| <b>Revenue:</b>                         |                               |                               |                               |                               |
| General Fund                            | \$0                           | \$4,807,700                   | \$4,807,700                   | \$6,246,350                   |
| State Special Revenue (OPI)             | \$96,150                      | \$96,150                      | \$124,927                     | \$151,790                     |
| State Special Revenue (OCHE)            | \$4,903,850                   | \$4,903,850                   | \$6,371,277                   | \$7,741,278                   |
| <b>Net Impact-General Fund Balance:</b> | <u>(\$5,000,000)</u>          | <u>(\$192,300)</u>            | <u>(\$1,688,504)</u>          | <u>(\$1,646,718)</u>          |

**Description of fiscal impact:** HB 357 creates a new My Choice Savings Account program for parents to enroll students with an education provider outside the student's district of residence. HB 357 would cost the state general fund a net \$5.2 million in the 2015 biennium and \$3.3 million in the 2017 biennium.

### FISCAL ANALYSIS

#### Assumptions:

#### **Office of Public Instruction (OPI)**

- HB 357 establishes a My Choice Savings Account program.
- An education provider is a public school, nonpublic school, accredited virtual school, tutor, or other individual or institution providing education to K-12 students. A home school cannot be an education provider under the definition in HB 357.

3. Education providers must notify the Superintendent of Public Instruction of the provider's intent to participate in the My Choice Savings Account program.
4. Money deposited in a My Choice Savings Account may be used for tuition and fees; textbooks and other instructional requirements; educational therapies; assessment tests, advanced placement exams, entrance examinations at an eligible postsecondary institution, or other assessment instruments; services provided by a public school; and payment to an eligible postsecondary institution for tuition, books, online courses, or other fees.
5. It is the responsibility of the parent and student to ensure that the student participates in annual state assessment testing or another nationally recognized assessment and annually report the student's scores to the Superintendent of Public Instruction. The resident school district is not allowed to include the student's scores in the resident school district's assessment reports.
6. The duties of the Superintendent of Public Instruction for the implementation of HB 357 include:
  - a. Receive notification from parent that the parent has enrolled the student in the resident district, but seeks to have the child educated through an education provider;
  - b. Verify student eligibility to participate in the My Choice Savings Account;
  - c. Maintain and publish a registry of education providers;
  - d. Oversee education providers;
  - e. Calculate the amount of the My Choice Savings Account Payment;
  - f. Make payments to the Commissioner of Higher Education and deduct monies from the resident school district;
  - g. Establish a reporting process by which individuals may notify the Superintendent of Public Instruction of any suspected violation of state laws related to program participation; and
  - h. Develop a cooperative agreement with the Commissioner of Higher Education to assist in the administration of My Choice Savings Accounts.
7. All nonpublic education providers must submit quarterly reports to the Superintendent of Public Instruction of receipts and expenditures for services provided to participating students.
8. The amount of the My Choice Savings Account provided for a single school year must be the amount of the per-ANB entitlement as defined in 20-9-306, MCA.
9. The resident school district shall continue to include the student in the district's ANB count until the student graduates or reaches 19 years of age.
10. The amount deducted from the resident district's state aid payment for each participating pupil is the amount of the per-ANB entitlement. For FY 2014, the per-ANB entitlement is anticipated to be \$5,120 for elementary ANB and \$6,555 for high school ANB. For FY 2015, the per-ANB entitlement is anticipated to be \$5,226 for elementary ANB and \$6,691 for high school ANB. The per-ANB entitlement increases annually per statutory inflation. The deduction by the state would effectively deduct both state and local funding.
11. Under current law, the state K-12 BASE Aid payment to a school district for the per-ANB entitlement would be 44.7% of the entitlement amount. HB 357 directs the superintendent to pay 100% of the per-ANB entitlement amount to the My Choice Savings Account and deduct the same from the resident school district in the following year. In the first year of a student's participation in the My Choice Savings Account, the state would pay 144.7% of the per-ANB entitlement to the district (44.7%) and to the My Choice Savings Account (100%). In the second year of a student's participation, the state would pay 100% of the current year's per-ANB entitlement to the My Choice Savings Account and deduct 100% of the prior year's per-ANB entitlement amount from the resident school district's state aid payment. HB 357 appropriates \$5 million in each year of the 2015 biennium from the state general fund to the Office of Public Instruction for the purpose of making transfers to the Commissioner of Higher Education and administrative costs for OPI and OCHE in the first year of a student's participation in the My Choice Savings Account Program. If the appropriation is not sufficient for FY 2014 or FY 2015, the superintendent may not accept additional new participants for the fiscal year. The \$5 million appropriation would allow approximately 825 students per

year to choose the My Choice Savings Account option in each year of the 2015 biennium. Each year following the first year of the program, the state general fund would retain the amount of funding paid to resident school districts in the prior year. The following table represents the change to the state general fund from FY 2014 through FY 2017.

|                                    | <b>FY 2014</b> | <b>FY 2015</b> | <b>FY 2016</b> | <b>FY 2017</b> |
|------------------------------------|----------------|----------------|----------------|----------------|
| Paid to My Choice Savings Accounts | (\$4,807,700)  | (\$4,807,700)  | (\$6,246,350)  | (\$7,589,488)  |
| Administration to OCHE             | (\$96,150)     | (\$96,150)     | (\$124,927)    | (\$151,790)    |
| Administration to OPI              | (\$96,150)     | (\$96,150)     | (\$124,927)    | (\$151,790)    |
| Retain from Resident Districts     |                | \$4,807,700    | \$4,807,700    | \$6,246,350    |
| Change to General Fund             | (\$5,000,000)  | (\$192,300)    | (\$1,688,504)  | (\$1,646,718)  |

12. It is not known how many students would participate in the My Choice Savings Account. OPI has estimated in other fiscal notes that 2% of students or 2,800 students would transfer from their resident district to participate in school choice options. For purposes of this fiscal note, it is assumed that only the \$5 million appropriation may be used to fund My Choice Savings Account participation. Beginning in the 2017 biennium, it is assumed that an additional 200 students per year would decide to participate, building toward a total of 2,800 students.
13. The Office of Public Instruction would need 1.00 FTE budget analyst to manage this program. The personal services cost for FY 2014 and FY 2015 is estimated to be \$63,201 in each year of the 2015 biennium. An operating budget of \$5,000 is also needed for this position.
14. The Superintendent of Public Instruction must transfer the My Choice Savings Account amount for each participating student to the My Choice Savings Account managed by the Commissioner of Higher Education in ten equal payments. The superintendent must deduct this same amount from the resident school district's state aid payments in the year following the year it is paid to the My Choice Savings Account. The Superintendent of Public Instruction may retain up to 2% of the payment amounts for costs associated with administering the My Choice Savings Accounts. It is assumed for purposes of this fiscal note, that OPI would retain the 2% allowance in a state special revenue account.

#### **Office of the Commissioner of Higher Education (OCHE)**

15. HB 357, Section 9, describes the responsibilities of the Commissioner of Higher Education to include establishing and managing individual My Choice Savings Accounts for students choosing to participate in this program. For the purpose of this fiscal note, this is considered to be a state special revenue account.
16. The OCHE would need 1.00 FTE program manager to manage this program. The personal services cost for each year of the 2015 biennium would be \$63,996, plus one-time operating expenses of \$2,900 in FY 2014.
17. The Office of the Commissioner of Higher Education is unable to estimate the number of students who would participate in the My Choice Savings Account Program, but it is expected that the 2% administrative fee would be sufficient to cover the costs.
18. It is assumed for purposes of this fiscal note that personal services and operating expenses will inflate by 1.5% in each year of the 2017 biennium.

|   | <b><u>FY 2014</u></b><br><b><u>Difference</u></b> | <b><u>FY 2015</u></b><br><b><u>Difference</u></b> | <b><u>FY 2016</u></b><br><b><u>Difference</u></b> | <b><u>FY 2017</u></b><br><b><u>Difference</u></b> |
|---|---|---|---|---|
| <b><u>Fiscal Impact:</u></b>  |   |   |   |   |
| <b>FTE (OPI)</b>  | 1.00  | 1.00  | 1.00  | 1.00  |
| <b>FTE (OCHE)</b>   | 1.00  | 1.00  | 1.00  | 1.00  |
| <b><u>Expenditures:</u></b>   |   |   |   |   |
| Personal Services (OPI)   | \$63,201  | \$63,201  | \$64,149  | \$65,111  |
| Personal Services (OCHE)  | \$63,996  | \$63,996  | \$64,956  | \$65,930  |
| Operating Expenses (OPI)  | \$5,000   | \$5,000   | \$5,075   | \$5,151   |
| Operating Expenses (OCHE)   | \$2,900   | \$0   | \$0   | \$0   |
| Transfer (OPI)  | \$96,150  | \$96,150  | \$124,927   | \$151,790   |
| Transfer (OCHE)   | \$4,903,850                                       | \$4,903,850                                       | \$6,371,277                                       | \$7,741,278                                       |
| <b>TOTAL Expenditures</b>   | <b>\$5,135,097</b>                                | <b>\$5,132,197</b>                                | <b>\$134,180</b>                                  | <b>\$136,193</b>                                  |
| <b><u>Funding of Expenditures:</u></b>  |   |   |   |   |
| General Fund (01)   | \$5,000,000                                       | \$5,000,000                                       | \$6,496,204                                       | \$7,893,068                                       |
| State Special Revenue (02) (OPI)  | \$68,201  | \$68,201  | \$69,224  | \$70,262  |
| State Special Revenue (02) (OCHE)   | \$66,896  | \$63,996  | \$64,956  | \$65,930  |
| <b>TOTAL Funding of Exp.</b>  | <b>\$5,135,097</b>                                | <b>\$5,132,197</b>                                | <b>\$6,630,384</b>                                | <b>\$8,029,261</b>                                |
| <b><u>Revenues:</u></b>   |   |   |   |   |
| General Fund (01)   | \$0   | \$4,807,700                                       | \$4,807,700                                       | \$6,246,350                                       |
| State Special Revenue (02) (OPI)  | \$96,150  | \$96,150  | \$124,927   | \$151,790   |
| State Special Revenue (02) (OCHE)   | \$4,903,850                                       | \$4,903,850                                       | \$6,371,277                                       | \$7,741,278                                       |
| <b>TOTAL Revenues</b>   | <b>\$5,000,000</b>                                | <b>\$9,807,700</b>                                | <b>\$11,303,904</b>                               | <b>\$14,139,418</b>                               |
| <b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b> |   |   |   |   |
| General Fund (01)   | (\$5,000,000)                                     | (\$192,300)                                       | (\$1,688,504)                                     | (\$1,646,718)                                     |
| State Special Revenue (02) (OPI)  | \$27,949  | \$27,949  | \$55,703  | \$81,528  |
| State Special Revenue (02) (OCHE)   | \$4,836,954                                       | \$4,839,854                                       | \$6,306,321                                       | \$7,675,348                                       |

**Effect on County or Other Local Revenues or Expenditures:****Office of Public Instruction (OPI)**

1. Deducting 100% of the per-ANB entitlement from the resident school district after the first year of participation would cause a shortfall in the resident school district's state aid. School districts' budgets are developed using 44.7% of the per-ANB entitlement as the amount of state aid to be received for the per-ANB entitlement. Each year after the first year of participation, the OPI would deduct 100% of the prior year per-ANB entitlement amount from the resident school district. The My Choice Savings Account program would create increased expenditures for resident school districts without the ability to increase revenue to cover the additional costs.

**Long-Term Impacts:**

1. The long-term impact of HB 357 to local governments is unknown. However, if students become a participant in the My Choice Savings Account Program, resident school districts would receive reduced state funding for each participant in the program. The more participants a resident district has, the bigger the impact to the district.

**Technical Notes:****Office of Public Instruction**

1. HB 357 is unclear how student expenditures are to be paid because the bill requires parents/students to submit quarterly receipts of expenses to OPI, yet the My Choice Savings Accounts are managed by OCHE.
2. The definition of “education provider” does not ensure that educational services are provided to children with disabilities by a “qualified” provider. The definition would make it impossible for the OPI to guarantee that all children with disabilities in Montana are receiving a free appropriate public education (FAPE). If the OPI cannot make this assurance, the federal Individuals with Disabilities Education Act (IDEA) dollars are at risk. In the current year, that amount is approximately \$37 million.
3. Under current rules a home school is defined as a private (nonpublic) school. This definition makes children with disabilities in home schools eligible for special education and related services under a private school services plan. If that definition changes, home school children would no longer be eligible for any services.
4. IDEA funds cannot be used to provide services to children that do not provide FAPE and they can only be used by the Local Education Agency (LEA) for the excess costs of providing special education and related services. IDEA funds cannot be used for providing college tuition unless the child’s Individual Education Program (IEP) team has determined that those costs are necessary for FAPE for a particular child.
5. Under IDEA, students with disabilities are eligible until 21 years of age if they have not graduated with a regular high school diploma.
6. The term “educational therapies” is not defined.
7. The requirements of Sections 6 and 7 limit the authority of the Superintendent of Public Instruction to monitor and oversee the providers and services provided to children with disabilities. This restriction violates the IDEA requirements for general supervision of special education and related services and would result in the withholding of the IDEA funds by the U.S. Department of Education, which would be a loss of approximately \$37 million per year.
8. Federal (IDEA Part B and Preschool) funds cannot be used to pay non-SPED (special education) costs (tuition, books, etc.) for a child. Also, the supplanting rules, Maintenance of Effort (MOE) rules, and Excess Cost rules are all still in effect regarding the use of federal funds.
9. If the district continues to have the student enrolled for ANB purposes, the district continues to have the responsibility for FAPE. This puts the district in the position of having the funds removed, having the parent make choices about who provides services (without regard to the provider’s ability to provide FAPE) and the resident school district being responsible for FAPE. The parent could make choices that are not in the child’s best interest, choose a provider that is not qualified, and then turn around and file a due process complaint against the resident school district for not ensuring FAPE.
10. This does not comply with the expenditure requirements for federal dollars that must be spent within 27 months of award. Also, the federal funds, if held in this manner could not be returned to the state general fund.
11. Section 9, directs remaining funds in a student’s My Choice Savings Account to be closed returned to the state general fund on a student’s 26th birthday. Section 3 limits eligibility to funds to high school graduation or age 19. HB 357 is unclear what is to happen to the funds held between the time the student is 19 and 26.

**Office of the Commissioner of Higher Education (OCHE)**

12. The bill does not provide any guidance on the fund type in accordance with 17-2-102, MCA, for the My Choice Savings Account to be managed by OCHE. The source of these funds is state general fund, the bill is not clear if it is the intent of the legislature for these funds to remain state general funds or to be transferred into a new state special revenue fund. Section 9 also requires amounts in the funds to revert to the state general fund upon a student's 26<sup>th</sup> birthday and this requirement would indicate the funds retain their state general fund nature. Currently, the bill only addresses the fund type in relation to the 2% administrative funds to be retained.
13. OCHE would need appropriation authority for the My Choice Savings Account in order to comply with Section 9, requiring that parents have the freedom to expend account funds for the purposes listed in Section 4. With a new program, it would be difficult to estimate the appropriation needs with a new start-up program, but an estimate would be made each biennium and included in HB 2. Since the effective date of the bill is upon passage and approval, appropriation authority would need to be added to HB 2 for the 2015 biennium.
14. As currently written, interest earnings on the My Choice Savings Account would be credited to the state general fund, rather than remaining with the My Choice Savings Account.

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*Sponsor's Initials*

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*Date*

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*Budget Director's Initials*

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*Date*